

**CITY of DENTON**  
**CODE of ORDINANCES**  
**Chapter 2: ADMINISTRATION**  
**ARTICLE XI. ETHICS - 2019**

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## DIVISION 1. – GENERALLY

### Sec. 2.41. - Policy and purposes.

- (a) *General policy statement.* It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds.
- (b) *Appearance of impropriety.* Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.
- (c) This code of ethics has five purposes:
- (1) To encourage ethical conduct on the part of city officials and employees;
  - (2) To encourage public service with the city;
  - (3) To establish standards for ethical conduct for city officials and employees by defining and prohibiting conduct that is incompatible with the interests of the city;
  - (4) To require disclosure by city officials and employees of their economic interests that may conflict with the interests of the city; and
  - (5) To serve as a basis for disciplining those who fail to abide by its terms.

### Sec. 2-42. Definitions.

As used in this Code of Ethics, the following words and phrases have the meaning ascribed to them in this section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply:

- (a) *Acceptance.* A written or verbal indication that someone agrees; "Acceptance" of an offer of subsequent employment or business opportunities includes legally binding contracts and all informal understandings that the parties expect to be carried out. An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.
- (b) *Affiliated.* Entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent entities.
- (c) *Affinity.* Relationship by "affinity" (by marriage) is defined in V.T.C.A., Government Code §§ 573.024 and 573.025.
- (d) *Before the City.* Representation or appearance "before the City" means before the City Council; before a board, commission, or other City entity; or before a City official or employee. Representation "before the City" does not include representation before a board where members of said board are not wholly appointed by the City Council.
- (e) *Benefit.* "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.
- (f) *Business days.* "Business days" means the days of the week, Monday through Friday, in which the administrative offices of the City are open for business.
- (g) *Candidate.* "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election.
- (h) *City.* "City" means the City of Denton, Texas, a home-rule municipality located in Denton County.
- (i) *Code of Ethics.* "Code of Ethics," "Ethics Code," or "this code" means Divisions 1 through 9 of this Article, its amendment(s) and/or enhanced definitions.
- (j) *Complainant.* "Complainant" means an individual who has filed a sworn complaint with the City Clerk as provided in Section 2-83 (Complaints).
- (k) *Confidential government information.* "Confidential government information" includes all information held by the City that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act.
- (l) *Consanguinity.* Relationship by "consanguinity" (by blood) is defined in V.T.C.A., Government Code §§ 573.022 and 573.023.
- (m) *Discretionary contract.* "Discretionary contract" means any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to V.T.C.A., Local Government Code § 252.022(a)(7) or those contracts not involving an exercise of judgment or choice.

(n) *Economic interest.* "Economic interest" includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a City official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that City official or employee an economic interest in the property of the organization.

Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than ten (10) percent of the voting stock or shares of the entity and the value of the stock is less than fifteen thousand dollars (\$15,000.00).

(o) *Employee.* Except as provided in Section 2-52 (Prohibited interests in contracts), Subsection 2-58(c) (Discretionary contracts), and Division 7 (Financial disclosure), the term "employee" or "City employee" is any person listed on the City payroll as an employee, whether part-time or full-time.

(p) *Entity.* "Entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, joint-venture, or any other entity recognized by law, including non-profit entities.

(q) *Former City official or employee.* A "former City official" or "former City employee" is a person whose City duties terminate on or after the effective date of this code.

(r) *Gift.* "Gift" means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

(s) *Indirect ownership.* A person "indirectly owns" an equity interest in an entity where the interest is held through a series of entities, some of which own interests in others.

(t) *Intentionally.* A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(u) *Knowingly.* A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.

(v) *Official.* Except in Division 5 (Lobbyists), the term "official" or "City official" includes the following persons:

The Mayor; Members of the City Council; The City Manager; Deputy City Managers; Assistant City Managers; Assistants to the City Manager; All department heads and assistant department heads; Internal Auditor and all Assistant Internal Auditors; Compliance Auditor; Executive secretaries; Public Utilities Supervisor; and City Attorney.

Members of all boards, commissions, committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be either quasi-judicial or advisory only in nature, who are appointed by the Mayor, the City Council, or who are designated in the by-laws or organization papers of the entity to serve on behalf of the City; and board members of any entity who are appointed by the Mayor or City Council to such board membership. on the City's ethics webpage.

The term "official" has a different meaning in Division 5 (Lobbyists), which is defined in Subsection 2-62(a) of that division. The term "officer" is defined in Subsection 2-52(e)(2) (Prohibited interests in contracts) and Subsection 2-58(c)(2) (Discretionary contracts) and is not synonymous with any use of the term "official" in this code.

(w) *Official action.* "Official action" includes:

(1) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official or employee's duties, and

(2) Any failure to act, if the official or employee is under a duty to act and knows that inaction is likely to affect substantially an economic interest of the official or employee or any person or entity listed in Subsections 243(a)(2)–(9) (Conflicts of interest).

(x) *Official Information.* "Official information" includes any information gathered pursuant to the power or authority of City government.

(y) *Ownership.* Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than ten (10) percent of the voting stock or shares of the entity and the value of the stock is less than fifteen thousand dollars (\$15,000.00).

(z) *Partner.* Someone who engages in an activity or undertaking with another; "partner" includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially in a venture with shared benefits and shared risks.

(aa) *Personally and substantially participated.* "Personally and substantially participated" means to have taken action as an official or employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action. The fact that the person had responsibility for a matter does not by itself establish that the person "personally and substantially participated" in the matter.

(bb) *Recklessly.* A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(cc) *Representation.* "Representation" is a presentation of fact—either by words or by conduct—made to induce someone to act. "Representation" does not include appearance as a witness in litigation or other official proceedings.

(dd) *Respondent* means an individual identified in a sworn complaint to have allegedly violated the Ethics Code or the Municipal Campaign Finance Code of the City.

- (ee) *Solicitation.* "Solicitation" of subsequent employment or business opportunities includes all forms of proposals and negotiations relating thereto.

## ***DIVISION 2. CURRENT CITY OFFICIALS AND EMPLOYEES***

### **Sec. 2-43. Conflicts of interest.**

(a) *General rule:* To avoid the appearance and risk of impropriety, a City official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:

- (1) His or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
- (2) His or her outside client;
- (3) A member of his or her household;
- (4) The outside employer of the official or employee or of his or her parent, child (unless the child is a minor), spouse, or member of the household (unless member of household is a minor);
- (5) An entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as that term is defined in Section 2-42
- (6) An entity which the official or employee knows is an affiliated or partner of an entity in which any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as defined in Section 2-42
- (7)
  - a. An entity for which the City official or employee serves as an officer or director or in any other policy making position; or
  - b. A non-profit board to which the official or employee is appointed by the City Council or City management to represent the best interests of the City, if the action by the City official or employee as a member of the board is related to an item pertaining to the City, and the City official or employee would be involved in the negotiation, development or implementation of that item on behalf of the City; or
- (8) A person or entity with whom, within the past twelve (12) months:
  - a. The official or employee, or his or her spouse, directly or indirectly has:
    1. Solicited an offer of employment for which the application is still pending;
    2. Received an offer of employment which has not been rejected; or
    3. Accepted an offer of employment; or
  - b. The official or employee, or his or her spouse, directly or indirectly engaged in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated.

(b) *Recusal and disclosure.* A City official or employee whose conduct would otherwise violate Subsection (a) must recuse himself or herself. From the time that the conflict is, or should have been recognized, he or she shall:

- (1) Immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
- (2) Promptly file with the City Clerk the appropriate form for disclosing the nature and extent of the prohibited conduct.

In addition:

- (3) A supervised employee shall promptly bring the conflict to the attention of his or her supervisor who will then, if necessary, reassign responsibility for handling the matter to another person; and
- (4) A member of a board shall promptly disclose the conflict to other members of the board and shall not be present during the board's discussion of, or voting on, the matter.

(c) *Definitions.* For purposes of this rule:

- (1) An action is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof; and
- (2) The term client includes business relationships of a highly personalized nature, but not ordinary business-customer relationships.

### **Sec. 2-44. Unfair advancement of private interests.**

(a) *General rule.* A City official or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A City official who represents to a person that he or she may provide an advantage to that person based on the official's position on a board or commission violates this rule.

(b) *Special rules.* The following special rules apply in addition to the general rule:

- (1) *Acquisition of interest in impending matters.* A City official or employee shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the City.

(2) *Reciprocal favors.* A City official or employee may not enter into an agreement or understanding with any other person that official action by the official or employee will be rewarded or reciprocated by the other person, directly or indirectly.

(3) *Appointment of relatives.* A City official or employee shall not appoint or employ or vote to appoint or employ any relative within the third degree of consanguinity or affinity or any member of his or her household to any office or position of employment within the City.

(4) *Supervision of relatives.* No official or employee shall be permitted to be in the line of supervision of a relative within the third degree of consanguinity or third degree of affinity or any member of his or her household. Department heads are responsible for enforcing this policy. If an employee, by reason of marriage, promotion, reorganization, or otherwise, is placed into the line of supervision of a relative, one of the employees will be reassigned or other appropriate arrangements will be made for supervision.

(c) *Recusal and disclosure.* A City official or employee whose conduct would otherwise violate this section shall adhere to the recusal and disclosure provisions provided in Subsection 2-43(b) (Conflicts of interest).

## Sec. 2-45. Gifts.

### (a) *General rule.*

(1) A City official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:

a. That reasonably tends to influence or reward official conduct; or

b. That the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

A City official or employee may accept a public award or reward for meritorious service of professional achievement, provided that the award or reward is reasonable in light of the occasion and it is not prohibited under V.T.C.A., Penal Code § 36.08.

(2) A City official or employee shall not solicit, accept, or agree to accept any gift or benefit, from:

a. Any individual or entity doing or seeking to do business with the City; or

b. Any registered lobbyist or public relations firm; or

c. Any person or entity seeking action or advocating on zoning or platting matters before a City body, save and except for:

1. Items received that are of nominal value; or

2. Meals in an individual expense of fifty dollars (\$50.00) or less at any occurrence, and no more than a cumulative value of five hundred dollars (\$500.00) in a single calendar year from a single source.

Doing business with the City includes, but is not limited to, individuals and entities that are parties to a discretionary contract, individuals and entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and entities that are parties to a discretionary contract and individuals or entities that seek or have low-bid contracts with the City.

### (b) *Special applications.* Subsection (a)(2) does not include:

(1) A gift to a City official or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;

(1) Advancement for or reimbursement of reasonable expenses for travel in connection with official duties authorized in accordance with City policies; such payments must be disclosed in a travel report as required in Section 2-76; payment for or reimbursement of expenses for travel in excess of authorized rates under City policy will be treated as a personal gift to the official or employee for any applicable reporting requirements under Sections 2-73, 2-74 or 2-78

(2) A public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion and it is not prohibited under V.T.C.A., Penal Code § 36.08;

(3) A loan from a lending institution made in its regular course of business on the same terms generally available to the public;

(4) A scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;

(6) Any solicitation for civic or charitable causes;

(7) Admission to an event in which the City official or employee is participating in connection with his or her spouse's position;

(8) Ceremonial and protocol gifts presented to City officials from a foreign government or international or multinational organization and accepted for the City;

(9) Admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the sponsor of the event, and unsolicited by the City official or employee, if attending or participating in an official capacity, including:

a. The official or employee participates in the event as a speaker or panel participant by presenting information related to matters before the City;

b. The official or employee performs a ceremonial function appropriate to that individual's position with the City; or

c. Attendance at the event is appropriate to the performance of the official duties or representative function of the official or employee;

(10) Admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the City official or employee;

(11) Admission to training or education program or other program, including meals and refreshments furnished to all attendees, if such training is related to the official or employee's official duties and the training is in the interest of the City.

(c) *Campaign contribution exception.* The general rule stated in Subsection (a) does not apply to a campaign contribution made pursuant to the Texas Election Code.

(d) *Gifts to closely related persons.* A City official or employee shall take reasonable steps to persuade:

- (1) A parent, spouse, child, or other relative within the second degree of consanguinity or affinity, or
- (2) An outside business associate not to solicit, accept, or agree to accept any gift or benefit:
- (3) That reasonably tends to influence or reward the City official's or employee's official conduct, or
- (4) That the official or employee knows or should know is being offered with the intent to influence or reward the City official's or employee's discharge of official duties.

If a City official or employee required to file a financial disclosure report under Division 7 (Financial disclosure) knows that a gift or benefit meeting the requirements of Subsections (d)(3) or (d)(4) of this rule has been accepted and retained by a person identified in Subsections (d)(1) or (d)(2) of this rule, the official or employee shall promptly file a report with the City Clerk disclosing the donor, the value of the gift or benefit, the recipient, and the recipient's relationship to the official or employee filing the report.

(e) *Definitions.*

!1) For purposes of this rule, a person is an "outside business associate" if both that person and the City official or employee own, with respect to the same entity:

- a. Ten (10) percent or more of the voting stock or shares of the entity, or
- b. Ten (10) percent or more of the fair market value of the entity.

(2) For purposes of this rule, a "sponsor" of an event is the person or persons primarily responsible for organizing the event or sponsoring a table or tables. A person who simply contributes money or buys tickets to an event is not considered a sponsor.

(3) A "source" is the individual or entity that funds an expenditure or series of expenditures. Expenditures made by multiple agents of the same source are deemed to be expenditures from a single source.

(4) An item of "nominal value" is an item with a fair market value of fifty dollars (\$50.00) or less.

#### **Sec. 2-46. Confidential information.**

(a) *Improper access.* A City official or employee shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.

(b) *Improper disclosure or use.* A City official or employee shall not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of said official's or employee's position concerning the property, operations, policies or affairs of the City. This rule does not prohibit:

- (1) Any disclosure that is no longer confidential by law; or
- (2) The confidential reporting of illegal or unethical conduct to authorities designated by law.

#### **Sec. 2-47. Representation of private interests.**

(a) *Representation of private interests before the City by a member of the board.* A City official or employee who is a member of a board or other City body shall not represent any person, group, or entity:

- (1) Before that board or body;
- (2) Before City staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
- (3) Before a board or other City body which has appellate jurisdiction over the board or body of which the City official or employee is a member, if any issue relates to the official's or employee's official duties.

(b) *Representation of private interests before the City by City officials and employees.*

- (1) *General rule.* A City official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the City. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (2) *Exception for board members.* The rule stated in Subsection (b)(1) does not apply to a person who is classified as a City official only because he or she is an appointed member of a board or other City body.

(c) *Prestige of office and improper influence.* In connection with the representation of private interests before the City, a City official or employee shall not:

- (1) Assert the prestige of the official's or employee's City position for the purpose of advancing private interests; or
- (2) State or imply that he or she is able to influence City action on any basis other than the merits.

(d) *Representation in litigation adverse to the City.*

- (1) *Officials and employees (other than board members).* A City official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other City body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City.
- (2) *Board members.* A person who is classified as a City official only because he or she is an appointed member of a board or other City body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to interests of the City and the matter is substantially related to the official's duties to the City.

**Sec. 2-48. Conflicting outside employment.**

- (a) *General rule.* A City official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) *Special application.* The following special rule applies in addition to the general rule: A City official or employee shall not provide services to an outside employer related to the official's or employee's City duties.
- (c) *Other rules.* The general rule stated above applies in addition to all other rules relating to outside employment of City officials and employees, including requirements for obtaining prior approval of outside employment as applicable.

**Sec. 2-49. Public property and resources.**

A City official or employee shall not use, request, or permit the use of City facilities, personnel, equipment, or supplies or time while on City duty for private purposes (including political purposes), except:

- (1) Pursuant to duly adopted City policies, or
- (2) To the extent and according to the terms that those resources are lawfully available to the public.

**Sec. 2-50. Political activity.**

Limitations on the political activities of City officials and employees are imposed by state law, the City Charter, and City personnel rules and are incorporated into this provision by reference. In addition, the following ethical restrictions apply:

- (1) *Influencing subordinates.* A City official or employee shall not, directly or indirectly, induce or attempt to induce any City subordinate of the official or employee:
  - a. To participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue, or
  - b. To refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this rule.

- (2) *Paid campaigning.* A City official or employee shall not accept anything of value, directly or indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a City body that contributed to the development of the ballot item. Any thing of value does not include a meal or other item of nominal value the City official or employee receives in return for providing information on an item pending on the ballot.
- (3) *Official vehicles.* A City official or employee shall not display or fail to remove campaign materials on any City vehicle under his or her control.

Limitations on the use of public property and resources for political purposes are imposed by Section 2-49 (Public property and resources).

**Sec. 2-51. Actions of others.**

- (a) *Violations by other persons.* A City official or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this Code of Ethics.
- (b) *Using others to engage in forbidden conduct.* A City official or employee shall not violate the provisions of this Code of Ethics through the acts of another.

**Sec. 2-52. Prohibited interests in contracts.**

- (a) *Prohibited Interests:* No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council shall render the contract involved voidable by the City Manager or the Council."
- (b) *Financial interest.* An officer or employee is presumed to have a prohibited "financial interest" in a contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
  - (1) The officer or employee;
  - (2) His or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - (3) An entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns;

- a. Ten (10) percent or more of the voting stock or shares of the entity, or
- b. Ten (10) percent or more of the fair market value of the entity; or
- (4) An entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
  - a. A subcontractor on a City contract;
  - b. A partner; or
  - c. A parent or subsidiary entity.

(c) The Mayor and members of the City Council may not have a "financial interest" in a contract with, or in the sale of any land, materials, supplies, or service to any entity to which they, either as individual City officers or as the City Council, selects or nominates members of its governing body. This prohibition applies only to the individual member of the City Council responsible for making the selection or nomination, if the selection or nomination does not require approval of the City Council; or to each member of the City Council, if the selection or nomination is made by an action of the City Council.

(d) If an officer or employee has or may potentially have a presumed prohibited financial interest in a contract with the City, or in the sale to the City of land, materials, supplies or service under Subsection (b), the officer or employee may apply to the Ethics Review Board for a determination and decision on whether the officer or employee has an actual direct or indirect financial interest in that contract or transaction.

The Ethics Review Board will make this assessment using a standard of "clear and convincing" evidence at a hearing. A request for such a determination cannot be made confidentially. The hearing must be posted ten (10) business days in advance, clearly stating the officer or employee with the presumed prohibited financial interest, the contract or transaction at issue, and the individual or entity that is the party to the contract or transaction at issue.

(e) Any contract or transaction already in place at the time the individual becomes an officer or employee subject to the prohibitions in Section 141 of the City Charter may remain in place until the contract expires or the transaction is completed without creating a prohibited financial interest for the officer or employee.

(f) Definitions. For purposes of enforcing Section 141 of the City Charter under the provisions of this section:

- (1) A City "employee" is any employee of the City who is required to file a financial disclosure statement pursuant to Subsection 2-73(a) (Financial disclosure report).
- (2) A City "officer" is:
  - a. The Mayor or any Council member;
  - b. A Municipal Court Judge or Magistrate; or
  - c. A member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the City.

#### **Sec. 2-53. City Council contract personnel.**

(a) A member of the City Council who, in the course of official duties, has direct supervisory authority over contract personnel shall make reasonable efforts to ensure that the conduct of contract personnel is compatible with the obligations imposed on City officials and employees by this Code of Ethics.

(b) Contract personnel employed by a member of the City Council shall comply with all obligations imposed by this Code of Ethics on City employees, except for restrictions on political activity imposed on City employees by the City Charter or the City's Personnel Rules under Section 2-50 of this code. Contract personnel, though, may not engage in political activity using City resources or during duty hours.

(c) All contracts for administrative services between a member of the City Council and independent contractors shall contain a provision requiring the independent contractor to comply with all requirements imposed by this code on City employees.

#### **Sec. 2-54. Persons required to report; time to report; place to report.**

- (a) A City official or employee who has knowledge of a violation of any of the provisions of this Ethics Code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A City official or employee shall not delegate to, or rely on, another person to make the report. Any City official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation is subject to the penalties herein.
- (b) Whistle-blower Protection: Neither the city, nor any person, including officials and employees, may take, or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any official, employee or other person ( or against any member of their family) because that person, or a person acting on his or her behalf, (a) reports, verbally or in writing, or files a complaint with the Ethics Commission regarding an alleged violation of this code, or (b) is requested by the Ethics Commission to participate in an investigation, hearing, or inquiry, or is involved in a court action relating either to the alleged violation or to evidence presented or given as part of an Ethics Commission investigation or hearing. The provisions of this section are not applicable when the complainant, witness, or reporter of a violation made accusations or other statements that were malicious and false. A violation of this section is a violation of this code.
- (c) A report made under this section shall be made to:
  - (1) The Compliance Auditor or his or her designee;
  - (2) The Ethics Review Board; or
  - (3) The City Attorney's Office.
- (d) A report shall state:



- (1) The name of the City official or employee who believes that a violation of a provision of the Ethics Code has been or may have been committed;
  - (2) The identity of the person or persons who allegedly committed the violation;
  - (3) A statement of the facts on which the belief is made; and
  - (4) Any other pertinent information concerning the alleged violation.
- (e) Notice of all reports shall be provided to the Compliance Auditor, Ethics Review Board, and City Attorney's Office within two (2) business days of receipt.

### ***DIVISION 3. FORMER CITY OFFICIALS AND EMPLOYEES***

#### **Sec. 2-55. Continuing confidentiality.**

A former City official or employee shall not use or disclose confidential government information acquired during service as a City official or employee. This rule does not prohibit:

- (a) Any disclosure that is no longer confidential by law; or
- (b) The confidential reporting of illegal or unethical conduct to authorities designated by law.

#### **Sec. 2-56. Subsequent representation of private interests.**

(a) *Representation of private interests before the City by a former board member.* A person who was a member of a board or other City body shall not represent any person, group, or entity for a period of two (2) years after the termination of his or her official duties:

- (1) Before that board or body;
- (2) Before City staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
- (3) Before a board or other City body which has appellate jurisdiction over the board or body of which the former City official or employee was a member, if any issue relates to his or her former duties.

(b) *Representation of private interests before the City by former City officials and employees.* A former City official or employee shall not represent for compensation any person, private group, or private entity, other than himself or herself, or his or her spouse or minor children, before the City for a period of two (2) years after termination of his or her official duties. This subsection does not apply to a person who was classified as a City official only because he or she was an appointed member of a board or other City body. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.

(c) *Improper representation of influence.* In connection with the representation of private interests before the City, a former City official or employee shall not state or imply that he or she is able to influence City action on any basis other than the merits.

(d) *Representation in litigation adverse to the City.* A former City official or employee shall not, absent consent from the City, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City and the matter is one in which the former City official or employee personally and substantially participated prior to termination of his or her official duties.

#### **Sec. 2-57. Prior participation in the negotiation, award or administration of contracts.**

A former City official or employee shall not, within two (2) years of the termination of official duties for the City, perform work on a compensated basis relating to a discretionary City contract, if he or she personally and substantially participated in the negotiation, award or administration of the contract.

A former City official or employee, within two (2) years of termination of official duties, must disclose to the City Clerk immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary City contract for which he or she did not personally and substantially participate in its negotiation, award or administration. This subsection does not apply to a person who was classified as a City official only because he or she was an appointed member of a board or other City body.

#### **Sec. 2-58. Prohibited interest in discretionary contracts.**

(a) *Impermissible interest in discretionary contract or sale.* This subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties, a former City officer or employee shall neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service. Any violation of this section, with the knowledge, expressed or implied, of the individual or entity contracting with the Council shall render the contract involved voidable by the City Manager or the Council. A former City officer or employee has a prohibited "financial interest" in a discretionary contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale: (1) The former officer or employee;

- (2) His or her parent, child, or spouse;
- (3) An entity in which the former officer or employee, or his or her parent, child or spouse, directly or indirectly owns:

- a. Ten (10) percent or more of the voting stock or shares of the entity, or
  - b. Ten (10) percent or more of the fair market value of the entity; or
- (4) An entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
- a. A subcontractor on a City contract;
  - b. A partner; or
  - c. A parent or subsidiary entity.

(b) *Exception: Prior employment or status.* Notwithstanding Subsection (a) and Section 2-57 (Prior participation in negotiation, award or administration of contracts), a former City official or employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official City duties.

(c) *Definitions.* For purposes of this section:

- (1) A "former City employee" is any person who, prior to termination of employee status, was required to file a financial disclosure statement pursuant to Subsection 2-73(a) (Financial disclosure report).
- (2) A "former City officer" is any person who, immediately prior to termination of official duties, was:
  - a. The Mayor or a member of City Council;
  - b. A Municipal Court Judge or Magistrate; or
  - c. A member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the City.
- (3) The term "contract" means any discretionary contract other than a contract for the personal services of the former City official or employee.
- (4) The term "service" means any services other than the personal services of the former official or employee.

#### ***DIVISION 4. VENDORS - OTHERS DOING BUSINESS WITH THE CITY***

##### **Sec. 2-59. Persons seeking discretionary contracts, housing and retail development incentives and the purchase, sale or lease of real estate.**

(a) *Disclosure of parties, owners, and closely related persons.* For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and this Code of Ethics, an individual or entity seeking a discretionary contract, a housing or retail development incentive, or seeking to purchase, sell or lease real estate to or from the City is required to disclose in connection with a proposal for a discretionary contract, and prior to City Council action regarding housing or retail development incentives and the purchase, sale or lease of real estate, on a form provided by the City:

- (1) The identity of any individual who would be a party to the transaction;
- (2) The identity of any entity that would be a party to the transaction and the name of:
  - a. Any individual or entity that would be a subcontractor to the transaction;
  - b. Any individual or entity that is known to be a partner or a parent entity of any individual or entity who would be a party to the transaction, or any subsidiary entity that is anticipated to be involved in the execution of the transaction; and
  - c. The board members, executive committee members, and officers of entities listed above; and
- (3) The identity of any lobbyist, attorney or consultant employed for purposes relating to the transaction being sought by any individual or entity who would be a party to the transaction.

An individual or entity seeking a discretionary contract, a housing or retail development incentive, or seeking to purchase, sell or lease real estate to or from the City is required to supplement this filing on a form provided by the City in the event there is any change in the information required of the individual or entity under this subsection. The individual or entity seeking such a transaction must supplement this filing before the transaction is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

(b) *Political contributions.* Any individual or entity seeking a discretionary contract, a housing or retail development incentive, or seeking to purchase, sell or lease real estate to or from the City must disclose in connection with a proposal for a discretionary contract, or prior to City Council action regarding the housing or retail development incentive or real estate matter, on a form provided by the City, all political contributions totaling one hundred dollars (\$100.00) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or entity whose identity must be disclosed under subsection (a).

Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made by the officers, owners of the entity seeking the contract, and attorneys, consultants or registered lobbyists of the entity hired or retained to assist an individual or entity in seeking a contract.

Indirect contributions do not include contributions by owners of an entity who hold less than five (5) percent of the fair market value or voting stock of the entity.

Political contributions made in the preceding twenty-four (24) months to any individual who is a former Councilmember must be disclosed, unless:

- (1) The contributions were made in connection with a campaign or officeholder account not associated with a City office;
- (2) The former officeholder has terminated the campaign treasurer appointment and filed the final campaign finance report with the City Clerk at the time the contract was in the solicitation process or under consideration for approval by the City; and

(3) The former member is not or was not serving in a City office at the time the contract was in the solicitation process or under consideration for approval by the City.

(c) *Briefing papers and open records.* Briefing papers prepared for the City Council concerning any proposed discretionary contract, housing or retail development incentive, or seeking to purchase, sell or lease real estate to or from the City to be considered for ordinance action shall reveal the information disclosed in compliance with Subsections (a) and (b), and that information shall constitute an open record available to the public.

**Sec. 2-60. Disclosure of association with City official or employee.**

- (a) *Disclosures during appearances.* A person appearing before a City board or other City body shall disclose to it any known facts which, reasonably understood, raise a question as to whether any member of the board or body would violate Section 2-43 (Conflicts of interest) by participating in official action relating to a matter pending before the board or body.
- (b) *Disclosures in proposals.* Any individual or entity seeking a discretionary contract with the City shall disclose, on a form provided by the City, any known facts which, reasonably understood, raise a question as to whether any City official would violate Section 2-43 (Conflicts of interest) by participating in official action relating to the discretionary contract.
- (c) *Disclosure of benefit.* If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, he or she shall disclose that fact in a signed writing to the City official, employee, or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Clerk.

*Definition.* For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**Sec. 2-61. Prohibited contacts during contract solicitation period.**

A person or entity who seeks or applies for a City contract or any other person acting on behalf of such person or entity, is prohibited from contacting City officials and employees as defined in Section 2-62 regarding such a contract after a request for proposal (RFP), request for qualification (RFQ) or other solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with City officials and employees, such contact will be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by respondents or their agents may lead to disqualification of their offer from consideration.

***DIVISION 5. LOBBYISTS***

**Sec. 2-62 -2-71 ; Reserved**

***DIVISION 6. MEMBERS OF THE PUBLIC AND OTHERS***

**Sec. 2-72. Forms of responsibility.**

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct violative of the obligations imposed by Divisions 2 (Present City officials and employees), 3 (Former City officials and employees), 4 (Persons doing business with the City), and 5 (Lobbyists) of this Ethics Code.

***DIVISION 7. FINANCIAL DISCLOSURE***

**Sec. 2-73. Financial disclosure report.**

(a) *Persons required to file disclosure form.*

(1) *City officials and designated City employees.* No later than thirty (30) days after accepting appointment or assuming the duties of office, and annually thereafter, the City officials as defined in Section 2-42 (Definitions), are required to file with the City Clerk a complete sworn financial disclosure report.

(2) *Exception.* Candidates for City Council and City officials required to file financial disclosure statements pursuant to V.T.C.A., Local Government Code Ch. 145 shall file financial disclosure statements in compliance with the Local Government Code in place of filing statements required by this Code of Ethics. Such officials shall also complete an addendum to the statement disclosing information required by this Code of Ethics, but not required under the Local Government Code. The addendum shall be developed jointly by the Compliance Auditor and the City Clerk. Deadlines for filing the financial disclosure documents shall be governed by V.T.C.A., Local Government Code Ch. 145

(b) *Open records.* Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.

(c) *Annual filing date.* Annual financial disclosure reports filed by City officials who are City employees and by City employees who are required to report must be received by the City Clerk by midnight on the 31st day of January. Annual financial disclosure reports filed by City officials who are not City employees and who are required to report must be received by the City Clerk by midnight on the 31st day of March. When the deadline falls on a Saturday or Sunday, or on an

official City holiday as established by the City Council, the deadline for receipt by the City Clerk is extended to midnight of the next day which is not a Saturday or Sunday or official City holiday. The City Clerk shall grant an extension of time in which to file a report upon written request submitted in advance of the deadline. The extension shall not exceed ten (10) business days.

*Unforeseen circumstances.* In the event of an unforeseen circumstance, including, but not limited to, military service or acute illness or leave without pay under the Family Medical Leave Act, the deadline for receipt by the City Clerk is extended until such time as the City official or employee resumes his City duties.

(d) *Reporting periods.* Each initial or annual financial disclosure report filed by an individual designated in Subsection 2-73(a)(1) and 2-73(a)(2) shall disclose information relating to the prior calendar year, as well as any material changes in that information which occurred between the end of the prior calendar year and the date of filing.

(e) *City Clerk.* The City Clerk shall:

- (1) Prior to January 15 of each year, notify City officials who are City employees and employees specified in Subsection (a)(1) of their obligation to file financial disclosure reports and provide forms to be completed; prior to February 15 of each year, notify City officials who are not City employees of their obligation to file financial disclosure reports and provide the forms to be completed; and shall notify City officials as defined by V.T.C.A., Local Government Code Ch. 145 of their obligation to file financial disclosure reports and provide the forms to be completed in accordance with that chapter;
- (2) Provide forms to all new City Council appointees and those filing for elective office, and advise them of reporting requirements and deadlines in accordance with V.T.C.A., Local Government Code Ch. 145
- (3) Provide guidance and assistance on the reporting requirements for persons required to file financial disclosure reports and develop common standards, rules, and procedures for compliance with Division 7 (Financial disclosure);
- (4) Review reports for completeness and timeliness;
- (5) Maintain filing, coding, and cross-indexing systems to carry out the purpose of Division 7 (Financial disclosure), including:
  - a. A publicly available list of all persons required to file; and
  - b. Computerized systems designed to minimize the burden of filing and maximize public access to materials filed under Division 7 (Financial disclosure);
- (6) Make available for public inspection and copying at reasonable times the reports filed under Division 7 (Financial disclosure);
- (7) Upon determining that such appointee who is required to file a financial disclosure report has failed to do so or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within ten (10) business days after the original deadline constitutes an automatic resignation. At the same time, the City Clerk shall provide to the City Council a list of the names of those who have not filed and to whom this notification is being sent. If such an appointee fails to file a completed report within ten (10) business days from the original deadline, the position shall be considered vacant, and a new appointment shall be made by the City Council; and
- (8) Upon determining that the Mayor, a member of City Council, a candidate for City Council, the City Manager, or a Municipal Court Judge or Magistrate has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within ten (10) business days after the original deadline will result in the matter being forwarded to the Ethics Review Board. If the person in question fails to file a completed report within ten (10) business days of the original deadline, a report of non-compliance shall be forwarded to the Ethics Review Board for appropriate action.
- (9) Upon determining that a person other than as provided in Subsections (7) or (8) above, has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within ten (10) business days after the original deadline will result in the matter being forwarded to the City Manager. If the person in question fails to file a completed report within ten (10) business days of the original deadline, a report of non-compliance shall be forwarded to the City Manager for appropriate action.

The failure of the City Clerk to provide any notification required by this section does not bar appropriate remedial action, but may be considered on the issue of culpability.

(f) *Exception.* A City official who is a member of a board or commission created pursuant to federal or state law may only be removed for failing to file a financial disclosure form if allowed under federal or state law.

#### **Sec. 2-74. Contents of financial disclosure reports.**

Each initial or annual financial disclosure report shall disclose, on a form provided by the City, the following information:

- (a) The reporting party's name;
- (b) The reporting party's employer;
- (c) The name of any entity (including self employment in the form of a sole proprietorship under a personal or assumed name) in which the reporting party or his or her spouse holds an economic interest;
- (d) The name of any which the reporting party knows is a partner, or a parent or subsidiary entity, of an entity owned by, operated by, or managed by the reporting party or his or her spouse;
- (e) The name of any person or entity from whom the reporting party or his or her spouse, directly or indirectly:
  - (1) Has received and not rejected an unsolicited offer of subsequent employment; or
  - (2) Has accepted an offer of subsequent employment which is binding or expected by the parties to be carried out;
- (f) The name of each nonprofit entity or other entity in which the reporting party serves as an officer or director, or in any other policy making position;
- (g) The name of each entity which has sought City business, has a current City contract or anticipates seeking City business in which the reporting party, the reporting party's parent, child or spouse is known to directly or indirectly own:

- (1) Ten (10) percent or more of the voting stock or shares of the entity, or
  - (2) Ten (10) percent or more of the fair market value of the entity;
- (h) The name of any entity of which the reporting party, or the reporting party's parent, child or spouse, or entity disclosed is known to be:
- (1) A subcontractor on a City contract;
  - (2) A partner; or
  - (3) A parent or subsidiary entity.
- (i) The name of each source of income, other than dividends or interest, amounting to more than five thousand dollars (\$5,000.00) received during the reporting period by the reporting party or his or her spouse, unless that source has been disclosed under Subsections (b) through (h);
- (j) The identification by street address, or legal or lot-and-block description, of all real property located in the State of Texas in which the reporting party or his or her spouse has a leasehold interest, a contractual right to purchase, or an interest as: fee simple owner; beneficial owner; partnership owner; joint owner with an individual or corporation; or owner of more than twenty-five (25) percent of a corporation that has title to real property. There is no requirement to list any property:
- (1) Used as a personal residence of a peace officer;
  - (2) Over which the reporting party has no decision power concerning acquisitions or sale; or
  - (3) Held through a real estate investment trust, mutual fund, or similar entity, unless the reporting party or his or her spouse participates in the management thereof;
- (k) The name of persons or entities to whom the reporting party or spouse owes an unsecured debt of more than five thousand dollars (\$5,000.00), except debts for:
- (1) Money borrowed from a family member from his or her own resources; and
  - (2) Revolving charge accounts.
- (l) The name of each person, business entity, or other organization from whom the reporting party, or his or her spouse, received a gift with an estimated fair market value in excess of one hundred dollars (\$100.00) during the reporting period and the estimated fair market value of each gift. Excluded from this requirement are:
- (1) Lawful campaign contributions which are reported as required by state statute or local ordinance;
  - (2) Gifts received from family members within the second degree of affinity or consanguinity;
  - (3) Gifts from an individual based on personal friendship who during the preceding three (3) calendar years: a) has not done or sought to do business with the City; b) has not sought City action on any issue before the City Council or any City board or commission; c) is not associated with any business or entity that has done or sought to do business with the City; and d) is not associated with any business or entity that has sought City action on any issue before the City Council or a City board or commission.
  - (4) Gifts received among and between fellow City employees and City officials;
  - (5) Admission to events in which the reporting party participated in connection with official duties;
  - (6) Payment of or reimbursement of travel and accommodations expenses accepted in connection with official duties which have been reported under Section 2-76 (Travel reporting requirements); payment for or reimbursement of expenses for travel in excess of authorized rates under City policy are gifts subject to the reporting requirements under this section.
- (m) The name of any person related as parent, child, or spouse to the reporting party and his or her employer; and (n) The name of any member of the reporting party's household not disclosed in Subsection (m) above.

**Sec. 2-75. Short form annual report.**

- (n) A person who is required to file an annual financial disclosure report may fulfill his or her filing obligations by submitting a short sworn statement on a form provided by the City, if there have been few or no changes in the information disclosed by that person in a complete financial disclosure report filed within the past five (5) years. The short statement shall indicate the date of the person's most recently filed complete financial disclosure report and shall state that there have been no material changes in that information or shall list any material changes that have occurred.

**Sec. 2-76. Travel reporting requirements.**

- (a) City-related travel. Any City official or employee who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Clerk, within ten (10) business days of return from the travel, a disclosure statement identifying:

- (1) The name of the sponsor;
- (2) The places visited;
- (3) The purpose and dates of the travel; and
- (4) The amount of the expenses incurred.

(b) Acceptance of a trip or excursion by Municipal Court Judges and Magistrates, City Manager, Deputy City Manager, City Clerk, Assistant City Clerk, Assistant City Managers, Assistants to the City Manager, and all department heads, assistant department heads, and employees in positions listed on the executive pay plan (job class 1000 through 1999) must receive prior written approval of the City Manager. Other personnel must receive written approval by their department director. Boards and commissions members must receive approval by a vote of their board or commission.

(c) Non-City travel. Any City official or employee required to file a financial disclosure report (Section 2-73), who accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Clerk, within ten (10) business days of return from the travel, a disclosure statement identifying:

- (1) The name of the sponsor;
- (2) The places visited;
- (3) The purpose and dates of the travel; and
- (4) The amount of the expenses incurred.

(d) The exceptions contained in Subsection 2-74(l) apply to the reporting requirements of Subsection (c), above.

#### **Sec. 2-77. Items received on behalf of the City.**

A City official or employee who accepts any item by way of gift valued over one hundred dollars (\$100.00) or loan on behalf of the City must promptly report that fact to the City Manager, who shall have the item appropriately inventoried as City property.

#### **Sec. 2-78. Other persons required to report gifts.**

In addition to the gift reporting requirements imposed by the financial disclosure rules stated in Subsection 2-74(l) (Contents of financial disclosure reports), other City employees specified on a list compiled annually by the Human Resources Department (or its successor department) and submitted to the City Clerk, and contract administrative assistants to members of City Council are also required to file an annual report on or before the 31st day of January of each year showing the source of a gift received during the previous year with a value of over one hundred dollars (\$100.00). Excluded from this requirement are:

- (1) Lawful campaign contributions which are reported as required by state statute;
- (2) Gifts received from family members within the second degree of affinity or consanguinity;
- (3) Gifts from an individual based on personal friendship who during the preceding three (3) calendar years:
  - a. Has not done or sought to do business with the City;
  - b. Has not sought City action on any issue before the City Council or any City board or commission;
  - c. Is not associated with any business or entity that has done or sought to do business with the City; and
  - d. Is not associated with any business or entity that has sought City action on any issue before the City Council or a City board or commission.
- (4) Gifts received among and between fellow City employees and City officials;
- (5) Admission to events in which the reporting party participated in connection with official duties;
- (6) Payment of or reimbursement of travel and accommodations expenses accepted in connection with official duties which have been reported under Section 2-76 (Travel reporting requirements); payment for or reimbursement of expenses for travel in excess of authorized rates under City policy are gifts subject to the reporting requirements under this section.

#### **Sec. 2-79. Violation of reporting requirements.**

Failure to timely file a report required by this Ethics Code is a violation hereof, as is the knowingly filing of a report with incorrect, misleading, or incomplete information. If an individual inadvertently files an incorrect, misleading, or incomplete report, it is his or her responsibility to file an amended report as soon as possible, though no later than ten (10) business days after notification or learning of the error.

To file a late or amended report, the person shall use the required report form provided by the City Clerk and mark in the appropriate box whether the report is late-filed or an amended report.

### ***DIVISION 8. ETHICS REVIEW BOARD***

#### **Sec. 2-80. Definitions.**

As used in Division 8 (Ethics Review Board), the term "ethics laws" includes this Code of Ethics, codified as Chapter 2, Article XI, Divisions 1—7 of the City Code, Section 141 of the City Charter, and V.T.C.A., Local Government Code Ch. 171. The term "ethical violation" includes violations of any of those enactments. Other terms used in Division 8 (Ethics Review Board) are defined in Section 2-42 (Definitions).

#### **Sec. 2-81. Structure of the Ethics Review Board.**

(a) In accordance with Article XIII of the City Charter, the independent Ethics Review Board has the powers and duties specified in Article XIII of the City Charter, Chapter 2, Article III (Ethics Code), and Chapter 2, Article VII (Municipal Campaign Finance Code), and other powers and duties prescribed by ordinance.

(b) Composition. The initial Ethics Review Board shall consist of seven (7) seated members and three (3) alternates. The Mayor and each member of the City Council shall nominate one (1) member of the Board. Each nominee must be confirmed by a majority of City Council members. Nomination and confirmation of Board members shall be conducted at separate open meetings of the City Council. To promote independence of the Ethics Review Board, within 90 days after the effective date of this code, the city's legislative body will designate five – seven, non-partisan, civic organizations to individually nominate future appointees to the ethics commission. Final appointments will be ratified by majority vote of city council.

(c) Terms of office. Initial Board appointments shall be made so that terms are staggered, with four (4) members to serve an initial term of two (2) years and three (3) members to serve an initial term of one (1) year, determined after appointment by lottery. Subsequent appointments shall be for a term of two (2) years beginning on the day after the expiration of the preceding full term. No member of the Board shall serve for more than three (3) full terms consecutively.

(d) Qualifications. Members of the Board shall have good moral character and shall be residents of the City. No member of the Board shall be:

- (1) A salaried City official or employee;
- (2) An elected public official;
- (3) A candidate for elected public office;
- (4) An officer of a political party;
- (5) A campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate for elected public office;
- (6) A campaign treasurer, campaign manager, officer or other policy or decision-maker for any political action committee as defined in the Texas Election Code;
- (7) A member of any City board or commission other than the Ethics Review Board;
- (8) A member of any City board or commission for which the position is appointed by City Council; or
- (9) A lobbyist required to register under Division 5 (Lobbyists).

Further, no member of the Ethics Review Board shall have any convictions for a felony or a crime of moral turpitude, or shall have been found in violation of any provision of the Ethics Code. The Denton Police Department will conduct a criminal background check through the NCIC system for each applicant to the Board.

The City Council shall support the inclusion of, at most, two (2) attorneys and one (1) individual with expertise in finance or accounting within the membership of the Ethics Review Board.

(e) Removal. Members of the Ethics Review Board may be removed from office for cause by a majority of the City Council only after a public hearing at which the member was provided with the opportunity to be heard. Grounds for removal include: failure to satisfy, or to continue to satisfy, the qualifications set forth in Subsection (d); substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision in this Code of Ethics or a conviction of a felony or crime of moral turpitude.

(f) Vacancies. The City Council shall fill any vacancy on the Board by a person who will serve the remainder of the unexpired term. The nomination to fill a vacancy shall be made by the member of City Council (or his or her successor) who had nominated the person whose successor is to be selected to fill the vacancy.

(g) Recusal. A member of the Ethics Review Board shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Board member may not participate in official action on any complaint:

- (1) That the member initiated;
- (2) That involves the member of City Council who nominated him or her for a seat on the Ethics Review Board; or
- (3) During the pendency of an indictment or information charging the member with any felony or misdemeanor offense, or after a finding of guilt of such an offense.

If the number of Board members who are recused from a case is so large that an Ethics Review Board cannot be convened to consider the complaint, the Mayor shall nominate a sufficient number of ad hoc members so that the case can be heard. Ad hoc members of the Ethics Review Board must be confirmed by a majority vote of the City Council and serve only for the case in question.

(h) Chair and vice-chair. Each year, the Board shall meet and elect a chair and a vice-chair from among its members, who will serve one-year terms and may be re-elected. The chair or a majority of the Board may call a meeting of the Board. The chair shall preside at meetings of the Ethics Review Board and perform other administrative duties. The vice-chair shall assume the duties of the chair in the event of a vacancy, or recusal, in that position.

(i) Panels. Each year, at the time of the election of a chair and vice-chair, or as needed under special circumstances, the chair will also make panel assignments. In the event of vacancies or absences, the chair may make reassignments as needed so that each panel has no fewer than three (3) members of the Board.

(j) Reimbursement. The members of the Ethics Review Board shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

## **Sec. 2-82. Jurisdiction and powers.**

(a) Jurisdiction. The Ethics Review Board has jurisdiction to investigate and make findings and conclusions concerning:

- (1) An alleged violation of the Ethics Code enacted from time to time by ordinance;
- (2) An alleged violation of regulations governing lobbying enacted from time to time by ordinance;
- (3) An alleged violation of local campaign finance regulations enacted from time to time by ordinance; and

(4) An alleged violation of Section 141 of the City Charter, provided, however, that the Ethics Review Board has no jurisdiction to find or conclude that a City officer or employee has forfeited his or her office or position.

(b) The Ethics Review Board shall not consider any alleged violation:

- (1) That occurred more than two (2) years prior to the date of the filing of the complaint; or
- (2) Of Sections 2-306 and 2-307 of the Municipal Campaign Finance Code if the required statement or report was filed or amended within the ten (10) business-day period provided.

(c) The Ethics Review Board has the discretion to accept or decline consideration of an alleged violation that has been resolved by the City Manager, or by a governmental agency or board with jurisdiction over the matter.

(d) Termination of City official's or employee's duties. The termination of a City official's or employee's duties does not affect the jurisdiction of the Ethics Review Board with respect to alleged violations occurring prior to the termination of official duties.

(e) Powers. The Ethics Review Board has the power:

- (1) To establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Ethics Code, including lobbying regulations, and the Municipal Campaign Finance Code;
  - (2) To meet as often as necessary to fulfill its responsibilities, but no less than annually;
  - (3) To designate panels with the power to render decisions on complaints or issue advisory opinions on behalf of the Board;
  - (4) To request from the City Manager the assignment of staff necessary to carry out its duties;
  - (5) To review, index, maintain on file, and dispose of sworn complaints;
  - (6) To make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
  - (7) To compel the production of sworn testimony, witnesses and evidence;
  - (8) To recommend cases for prosecution by appropriate authorities and agencies;
  - (9) To enforce its decisions by assessing civil fines and other sanctions authorized by this ordinance;
  - (10) To request the City Attorney to provide an independent counsel to advise and represent the Board, when appropriate or necessary to avoid a conflict of interest;
  - (11) To provide assistance in the training and education of City officials and employees with respect to their ethical responsibilities;
  - (12) To prepare an annual report and to recommend to the City Council needed or desirable changes in ordinances under its jurisdiction;
- To exercise such other powers and duties as may be established by ordinance

#### Sec. 2-83. Complaints.

(a) Filing. Any person (including a member of the Ethics Review Board or its staff, acting personally or on behalf of the Board) who believes that there has been a violation of the ethics laws or the Municipal Campaign Finance Code may file a sworn complaint with the City Clerk and/or Auditor to allege such violations.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the Ethics Review Board, may be subject to criminal prosecution for perjury (see Subsection 2-87(g) (Criminal prosecution)) or civil liability for the tort of abuse of process.

(b) Assistance. The City Clerk shall provide information to persons who inquire about the process for filing a complaint.

(c) Form. A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

- (1) The name of the complainant;
- (2) The street or mailing address and the telephone number of the complainant;
- (3) The name of respondent or person complained about;
- (4) The position or title of each respondent or person complained about;
- (5) The nature of the alleged violation, including, if possible, the specific provision of the Ethics Code or Municipal Campaign Finance Code alleged to have been violated;
- (6) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
- (7) All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code or the Municipal Campaign Finance Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. A complaint that is not sworn as required shall not be forwarded by the City Clerk to the Compliance Auditor as provided in Subsection (d), but shall be returned to the complainant.



The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the Board. (d) Review by the Compliance Auditor and notification to the Ethics Review Board and respondents.

(1) A copy of a complaint shall be promptly forwarded by the City Clerk to the Compliance/city Auditor. The Compliance Auditor shall review the complaint for compliance with the filing requirements of Subsection (c) within five (5) business days of receipt from the City Clerk.

(2) If the complaint alleges a violation of Section 2-306 or Section 2-307 of the Municipal Campaign Finance Code, the complaint shall be forwarded by the City Clerk to the respondent within five (5) business days of receipt by the Compliance Auditor. As set out in Subsection 2-82(b) (2), the timely filing of the campaign bank account statement or the amended report, as verified by the City Clerk, shall not be considered a violation. The City Clerk shall notify the complainant of the filing of the statement or the amended report by first class mail.

(3) If the complaint alleges a violation of the Ethics Code, and substantially complies with the filing requirements, the complaint shall be forwarded by the City Clerk to the members of the Ethics Review Board and the respondents within ten (10) business days after receipt of the complaint from City Clerk. If the complaint does not substantially comply with the filing requirements, the Compliance Auditor shall return the complaint to the complainant with a letter explaining the defects in the complaint.

(e) The respondent(s) shall also be provided with a copy of the Ethics Code and shall be informed:

(1) That, within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Clerk;

(2) That failure to file a response does not preclude the Ethics Review Board from adjudicating the complaint;

(3) That a copy of any response filed by the respondent(s) will be provided by the City Clerk to the complainant, who may, within five (5) business days of receipt, respond by sworn writing filed with the City Clerk, a copy of which shall be provided by the City Clerk to the respondent(s);

(4) That the complainant(s) or respondent(s) may request a hearing; and;

(5) That City officials and employees have a duty to cooperate with the Ethics Review Board.

Upon receipt, the City Clerk shall forward the response to the Compliance Auditor, City Attorney's Office, and the Ethics Review Board.

(f) Frivolous complaint.

(1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

(2) By a vote of at least two-thirds (2/3) of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.

(3) In deciding if a complaint is frivolous, the Board will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

a. The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

b. The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Board;

c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

d. If respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

e. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

f. Any evidence of the complainant's motives in filing the complaint.

(4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:

a. An explanation of why the complaint against a respondent appears to be frivolous; and

b. The date, time, and place of the hearing to be held under this section.

(5) Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Board shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.

(6) By a record vote of at least two-thirds (2/3) of those present after the hearing under Subsection (5) of this section, the Board may determine that a complainant filed a frivolous complaint against a respondent and may recommend sanctions against that complainant.

(g) Sanctions for filing frivolous complaints.

(1) Before imposing a sanction for filing a frivolous complaint, the Board shall consider the following factors:

a. The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

b. The sanction necessary to deter future violations; and

c. Any other matters that justice may require.

(2) The Board may impose the following sanctions:

a. A letter of reprimand or

b. Any other sanction permitted by this code.

(3) The Board may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.

(h) Confidentiality. Ex parte communications by members of the Ethics Review Board are prohibited by Subsection 2-85(e) (Ex parte communications).

(1) The Board and its staff shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or Ethics Review Board proceeding.

(3) Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

(4)

#### **Sec. 2-84. Compliance-City Auditor.**

(a) Compliance Auditor. A Compliance Auditor may be selected by the Ethics Review Board or served by the City Internal Auditor. The Compliance Auditor may be removed from office for cause by the City Internal Auditor only after consultation with the Ethics Review Board.

(b) The Compliance Auditor shall perform the following duties:

(1) Receive and promptly transmit to the Ethics Review Board complaints and responses filed with the City Clerk as set forth in Section 2-83.

(2) Investigate, marshal, and present to the Ethics Review Board the evidence bearing upon a complaint;

(3) In consultation with City Council, the City Manager, the Ethics Review Board, Human Resources Department, and the City Attorney's Office, develop and implement a comprehensive training program for the officials and employees of the City on the provisions of this Code of Ethics, Section 141 of the City Charter, and V.T.C.A., Local Government Code Ch. 171;

(4) Review complaints for sufficiency;

(5) Recommend acceptance or rejection of complaint made to the Ethics Review Board; and

(6) Request additional information from complainant as needed.

(c) Independent Compliance Auditor and Independent Counsel.

(1) An independent attorney, who does not otherwise represent the City, shall be appointed to serve as the independent Compliance Auditor and Counsel when a complaint is filed relating to an alleged violation of the ethics laws by the Mayor or a member of the City Council.

(2) When a complaint is filed relating to an alleged violation of the ethics laws by a City employee who is a department head or of higher rank, the Compliance Auditor may recommend the appointment of an independent compliance auditor to serve as Compliance Auditor for that matter. The City Attorney may also recommend the appointment of an independent Counsel for that matter.

(3) The Ethics Review Board may request the appointment of an independent counsel for a particular case.

Exculpatory evidence. The Compliance Auditor shall disclose to the Ethics Review Board and provide to the person charged with violating the ethics or municipal campaign finance laws evidence known to the Compliance Auditor tending to negate guilt or mitigate the seriousness of the offense.

#### **Sec. 2-85. Ethics panels and the Ethics Review Board.**

(a) Assignment to an Ethics Panel. The chairperson of the Ethics Review Board may appoint a panel to conduct a preliminary review of an ethics complaint or request for advisory opinion. The panel may present its recommendations for consideration by the Board in its entirety. The chair may also designate a panel with the power to render decisions on complaints or issue advisory opinions on behalf of the Board. Panels appointed to dispose of complaints or issue advisory opinions must act in accordance with the Open Meetings Act.

(b) Review by Ethics Review Board. The Ethics Review Board will meet to review the complaint, responses, replies to responses and any other information it has requested be provided to assist in consideration of the complaint. The Board shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. If the Board finds that the complaint fails to allege a violation of the Ethics Code when assuming all facts set forth in the complaint to be true, the Board may dismiss the complaint without further proceedings.

(c) Before the Board may find that a violation of a particular rule, the respondent must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; or if the Board or the City Clerk provides the respondent with written notice of the alleged violation and a ten (10) business-day period within which to respond in writing to the charge.

(d) Scheduling of a hearing. Regardless of whether the complainant or the respondent requests a hearing, the Ethics Review Board has discretion to decide whether to hold a hearing.

(e) Ex parte communications. It is a violation of this code:

(1) For the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the Ethics Review Board, or any known witness to the complaint; or

(2) For a member of the Ethics Review Board to:

- a. Knowingly entertain an ex parte communication prohibited by Subsection (1) of this rule; or
- b. Communicate directly or indirectly with any person, other than a member of the Ethics Review Board, its staff, City Attorney's Office, or the Compliance Auditor, about any issue of fact or law relating to the complaint.

(f) Duty to cooperate. All City officials and employees shall cooperate with the Ethics Review Board and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation of this Code of Ethics.

(g) Extension of deadlines.

(1) A complainant or respondent who fails to meet a deadline to submit a filing with the Ethics Review Board may file a request to accept late filing. The complainant or respondent must include within the request a statement of good cause for the Board to grant the request. The Board may grant a request to accept a late filing for good cause. Any extension given to a respondent pursuant to his or her request shall extend the deadline for the Board to issue a decision under Section 2-87 by the amount of time granted.

(2) The Board, under its own initiative or at the request of a respondent, may defer consideration of a complaint if the respondent is under investigation by any agency for the activity comprising the subject matter of the complaint, until such time as the investigation has concluded.

(h) Timeliness of notices or submissions. When the Ethics Code or Municipal Campaign Finance Code requires a notice or other document to be submitted or otherwise given to a person or to the Ethics Review Board, the requirement is met in a timely fashion if the document is sent to the person or the Board by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.

#### Sec. 2-86. Hearings.

At any hearing held by the Ethics Review Board during the investigation or disposition of a complaint, the following rules apply:

(1) *General rules.* All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the Ethics Review Board or the Compliance Auditor. The Ethics Review Board may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws or the Municipal Campaign Finance Code unless a majority of the Ethics Review Board so finds by a preponderance of the evidence.

(2) *Evidence.* The Ethics Review Board shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Board shall further abide by the following:

a. The Board shall hear evidence relevant to the allegations; and

b. The Board shall not consider hearsay unless it finds the nature of the information is reliable and documented.

(3) *The person charged (respondent).* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the Board. The time permitted for presentation will be at the discretion of the Board.

(4) *The complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the Board. Witnesses may not be presented by the complainant, except with the permission of the Board. The time permitted for presentation will be at the discretion of the Board.

#### Sec. 2-87. Disposition.

(a) *Written opinion.* The Board shall issue a decision within ninety (90) calendar days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant to a respondent's request for additional time to respond or to attend proceedings. The Board shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

(1) Dismiss the complaint; or

(2) Upon finding that there has been a violation of the ethics laws or the Municipal Campaign Finance Code:

a. Impose sanctions in accordance with these regulations; or

b. Recommend criminal prosecution and/or civil remedies, in accordance with this rule; or

c. State why no remedial action is imposed or recommended.

If the Board determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Board to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(b) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the City Attorney's Office, Compliance Auditor, and any member of the Ethics Review Board who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Clerk, who shall make it available as authorized by law.

(c) *Recommendations.* A recommendation for criminal prosecution shall may be forwarded to the appropriate law enforcement agency.

(d) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws or the Municipal Campaign Finance Code, the Ethics Review Board shall not entertain any other similar complaint based on substantially the same evidence.

(e) *Factors relevant to sanctions.*

(1) *General violations (non-reporting violations).* In deciding whether to recommend or impose, in the case of a violation of the ethics laws, criminal prosecution and/or civil remedies, the Ethics Review Board shall take into account relevant considerations, including, but not limited to, the following:

- a. The culpability of the person charged in the complaint;
- b. The harm to public or private interests resulting from the violation;
- c. The necessity of preserving public confidence in the conduct of local government;
- d. Whether there is evidence of a pattern of disregard for ethical obligations; and
- e. Whether remedial action has been taken that will mitigate the adverse effect of the violation.

To impose or recommend sanctions for a first violation of the Ethics Code or the Municipal Campaign Finance Code, other than a letter of notification, a letter of admonition or a referral to training, the Board must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

(2) *Reporting requirement violations.* To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the Ethics Code or the Municipal Campaign Finance Code, the Board must determine by a preponderance of the evidence that the person knowingly:

- a. Failed to file the report on time; or
- b. Failed to include in the report information that is required to be included; or
- c. Submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the City Clerk, the Compliance Auditor, or the Ethics Review Board may be considered evidence of a knowing failure to comply with reporting requirements.

Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two-year period of time, the Board may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

(f) *Civil sanctions for Ethics Code violations.* The following civil remedies may be recommended or imposed by the Ethics Review Board which finds that the ethics laws have been violated:

(1) *Disciplinary action.* Civil service employees who violate this Code of Ethics may be disciplined in accordance with City personnel rules and procedures. Other City officials and employees who engage in conduct that violates this code may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in this Code of Ethics or any other law. The Ethics Review Board may refer a violation to the City Manager or his or her designee for disciplinary action in accordance with any applicable municipal civil service rules;

(2) *Suit for damages or injunctive relief.* This Code of Ethics has been enacted not only to further the policy stated in Section 2-41 (Statement of purpose), but to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this Ethics Code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this Ethics Code or the Municipal Campaign Finance Code or any other law. The Ethics Review Board may refer a violation of the Ethics Code or the Municipal Campaign Finance Code to the City Attorney's Office for consideration of a suit by the City for damages or injunctive relief.

(3) *Disqualification from contracting or lobbying.*

a. If the Ethics Review Board finds that any person (including business entities and non-profit entities) has intentionally or knowingly violated any provision of the Ethics Code, or has intentionally or knowingly assisted another person in violating any provision of the Ethics Code, or has violated a provision or assisted another in a violation that the person should have known was a violation of the Ethics Code, the Ethics Review Board may recommend to the City Council that the person be prohibited from entering into any contract with the City or prohibited from lobbying on behalf of clients before the City for a period not to exceed three (3) years.

An entity may also be disqualified from contracting based on the conduct of an employee or agent in violation of this code.

b. It is a violation of this Code of Ethics:

1. For a person debarred from entering into a contract with the City to enter, or attempt to enter, into a contract with the City during the period of disqualification from contracting; or
2. For a City official or employee to knowingly assist a violation of Subsection b.1. of this rule.

c. Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

(4) *Recommendation to void or ratify contract.* If the Ethics Review Board finds that there has been an intentional or knowing violation of any provision of the Ethics Code, or that a person has committed a violation that he or she should have known was a violation of the code that is related to the awarding of a contract, the Ethics Review Board must vote on whether to recommend to the City Council that the contract be ratified or voided. Such action shall not affect the imposition of any penalty or remedy contained in this Code of Ethics or any other law.

(5) *Civil fine. (Reserved).*

(6) *Letter of notification.* The Ethics Review Board may issue a letter of notification to any person, whether or not an official or employee of the City, when the Board finds that a violation of the Code of Ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.

(7) *Letter of admonition.* The Ethics Review Board may issue to any person, whether or not an official or employee of the City, a letter of admonition when the Board finds that the violation of the Code of Ethics was minor and/or may have been unintentional or inadvertent.

(8) *Letter of reprimand.* The Ethics Review Board may issue to any person, whether or not an official or employee of the City, a letter of reprimand when the Board finds that the person has intentionally or knowingly violated the Code of Ethics.

(9) *Referral to ethics training.* Upon finding of violation of the Ethics Code, the Ethics Review Board may require a City official or employee to attend Ethics Code training.

(g) *Criminal prosecution.* The Ethics Review Board may recommend to the appropriate law enforcement agency criminal prosecution under this section or V.T.C.A., Local Government Code Ch. 171. Prosecution of any person by the City Attorney for a violation of this Ethics Code shall not be undertaken until a complaint is disposed of in accordance with Section 2-87. However, the absence of a recommendation to prosecute from an Ethics Review Board to the City Attorney shall not preclude the City Attorney from exercising his or her prosecutorial discretion to prosecute a violation of this Ethics Code. Any person who files a false sworn statement under Division 5 (Lobbyists), Division 7 (Financial disclosure), or Division 8 (Ethics Review Board) or the Municipal Campaign Finance Code is subject to criminal prosecution for perjury under the laws of the state.

(h) *Reconsideration.* Within five (5) business days of receiving the final opinion of the Ethics Review Board, the complainant or respondent may request the Ethics Review Board to reconsider its decision. The request must be filed with the City Clerk. Within ten (10) business days after filing with the City Clerk, the originally assigned preliminary reviewing panel shall review the request for reconsideration. If the panel concludes reconsideration is warranted, it shall bring the request within another ten (10) business days to the full Board for decision on whether to grant reconsideration. If the full Board grants reconsideration, the Board may then order further proceedings in accordance with the provisions of this code. If no panel was assigned to conduct a preliminary review, the chair shall review the request and may in his or her discretion decline the reconsideration or refer the matter to the full Board for reconsideration within ten (10) business days of receiving the request.

(i) *Council action.* City Council shall dispose of a recommendation from the Ethics Review Board within ninety (90) calendar days of receiving such recommendation. The recommendation(s) of the Ethics Review Board may be accepted, rejected, modified, or recommitted to said Board for further action or clarification. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(j) *Appeals.* A decision of the Ethics Review Board is final unless the person aggrieved by the decision appeals to the State District Court in Denton County no later than twenty (20) business days after the date the Board renders the decision.

If the decision of the Ethics Review Board is not supported by substantial evidence, the District Court may reverse or affirm the Board's decision in whole or in part, or may modify the Board's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the Board, individual Board members, or the City.

#### **Sec. 2-88. Petition for declaratory ruling.**

Any City official or employee against whom public allegations of ethics or campaign finance violations have been made in the media or elsewhere shall have the right to file a sworn statement with the City Clerk affirming his or her innocence, and to request the Ethics Review Board to investigate and make known its findings, and make any relevant recommendations concerning the issue. The Ethics Review Board is authorized to impose the sanctions contained within this code when making their ruling.

#### **Sec. 2-89. Advisory opinions.**

(a) *Advisory opinions issued by the Ethics Review Board.*

(1) *Ethics Code inquiries by persons other than City officials and employees.*

a. By writing filed with the City Clerk, any person other than a City official or employee may request an advisory opinion with respect to the interpretation of the ethics laws, but only with respect to whether proposed action by that person would violate the ethics laws. The City Clerk shall promptly transmit all requests for advisory opinions to the Compliance Officer and the chair of the Ethics Review Board. City officials and employees may request advisory opinions from the City Attorney pursuant to Subsection (b).

b. Within thirty (30) days of receipt by the chair of the Ethics Review Board of a request for an advisory opinion, the Board, acting en banc or through a designated Ethics Panel, shall issue a written advisory opinion. During the preparation of the opinion, the Board may consult with the Compliance Auditor, the City Attorney's Office, and other appropriate persons. An advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. A copy of the opinion shall be indexed and kept by the Ethics Review Board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the Ethics Review Board, or the Compliance Auditor, to the person who requested the opinion, the members of the Ethics Review Board, the City Attorney's Office, and to the City Clerk. The City Clerk shall make the opinion available as a public record in accordance with the Local Government Records Act, and promptly post the opinion for a period of no less than five (5) years on the Internet via the City of Denton homepage.

(2) *Opinions initiated by the Board.* On its own initiative, the Ethics Review Board, acting as the full Board or through a designated Ethics Panel, may issue a written advisory opinion with respect to the interpretation of the ethics laws or the Municipal Campaign Finance Code as they apply to persons other than City officials and employees if a majority of the Board determines that an opinion would be in the public interest or in the interest of such person or persons subject to the provisions of the ethics laws. Such an opinion may not include the name of any individual who may be affected by the opinion. A copy of any such opinion shall be indexed and kept by the Ethics Review Board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the Ethics Review Board, or his or her designate, to the Compliance Auditor, the City Attorney's Office, and the City Clerk. The City Clerk shall make the opinion available as a public record in accordance with the Local Government Records Act, and promptly post the opinion for a period of no less than five (5) years on the Internet via the City of Denton homepage.

(3) *Reliance.* A person who reasonably and in good faith acts in accordance with an advisory opinion issued by the Ethics Review Board may not be found to have violated the ethics laws by engaging in conduct approved in the advisory opinion, provided that:

- a. He or she requested the issuance of the opinion;
- b. The request for an opinion fairly and accurately disclosed all relevant facts; and
- c. Less than five (5) years elapsed between the date the opinion was issued and the date of the conduct in question.

**Sec. 2-90. Annual report.**

The Ethics Review Board may, at its discretion, prepare and submit an annual report to the Mayor and City Council detailing the activities of the Board during the prior year. The format for the report shall be designed to maximize public and private understanding of the Board's operations, and shall include a summary of the content of ethics opinions issued by the Board and a listing of current City lobbyists based on information gathered by the Board from records on file with the City Clerk. The City Clerk shall post the report on the City's ethics webpage.

**Sec. 2-91. Public records and open meetings.**

Meetings and other proceedings of the Ethics Review Board will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.

***DIVISION 9. ADMINISTRATIVE PROVISIONS***

**Sec. 2-92. Other obligations.**

This Ethics Code and the Municipal Campaign Finance Code are cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein.

Even if a City official or employee is not prohibited from taking official action by this Ethics Code, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

**Sec. 2-93. Compliance Auditor review.**

The Compliance Auditor shall conduct a compliance review of political contributions and financial disclosure documents filed under the provisions of this Ethics Code and the Municipal Campaign Finance Code, including identifying conflicts of interests, in connection with the City's solicitations for all high profile discretionary contracts, and shall conduct a random sampling for all other contracts. The Compliance Auditor shall report all findings to the City Manager, City Internal Auditor, City Council Audit Committee, the City Attorney, and the Ethics Review Board, for appropriate action.

**Sec. 2-94. Distribution and training.**

(a) Within thirty (30) days after entering upon the duties of his or her position, every new official or employee shall be furnished with information about this Code of Ethics. The failure of any person to receive a copy of this code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions. Upon appointment to a board or commission, such official shall be provided with a copy of the Ethics Code. The Code of Ethics shall be posted on the City's webpage.

(b) The Compliance Auditor, in consultation with City Council, the City Manager, the Ethics Review Board, Human Resources Department and City Attorney's Office, shall develop and implement a comprehensive training program for the officials and employees of the City on the provisions of this Code of Ethics, Section 141 of the City Charter, and V.T.C.A., Local Government Code Ch. 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws, as well as to prepare City officials and employees to ensure the good judgment necessary to accomplish the statement of purpose in Section 2-41 above.

(c) The Office of the City Manager and Department of Human Resources shall enact an administrative directive requiring that all departments provide their employees with training on the Ethics Code at least once every other calendar year. Training shall be provided to all City departments by video or live presentation and will include educational materials. Additional presentations shall be offered to any department where necessary to accommodate large numbers of employees.

(d) The Office of the City Attorney shall notify the Compliance Auditor and department directors regarding any significant amendments to the Ethics Code within twenty (20) business days of adoption. Department directors shall disseminate the information to department employees.

(e) Information shall be provided to employees terminating City service regarding the restrictions on former City employees in Division 3 of this code.

**Sec. 2-95. Severability.** If any provision of this code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.

**Secs. 2-96—2-105. Reserved.**

